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5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
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8 STEVEN C. ATKINS,

9 Plaintiff,

No. C-03-3566 MHP

10 v.

11 COUNTY OF ALAMEDA, CITY OF ALAMEDA,
12 OFFICER P. WYETH, EILEEN MCANDREW, and
DOES 1–10,

13 Defendants.
14 _____/

MEMORANDUM AND ORDER
Motion to Stay

15 On July 31, 2003, plaintiff Steven C. Atkins, proceeding *pro se*, brought this civil action against
16 defendants the County of Alameda, City of Alameda, Eileen McAndrew, and Officer Patrick Wyeth of the
17 Alameda Police Department (collectively “defendants”). Atkins’ complaint alleges that defendants
18 participated—individually and collectively—in the false arrest, illegal search, and malicious prosecution of
19 plaintiff; in the process, plaintiff alleges, defendants violated the Fourth, Fifth, Sixth, Eighth, and Fourteenth
20 Amendments to the United States Constitution. For these supposed violations, plaintiff seeks unspecified
21 sums of compensatory and punitive damages, and he requests an award of costs and attorneys’ fees.

22 On August 20, 2003, defendants filed an answer to plaintiff’s complaint. Now before the court is
23 defendants’ motion to stay this action, pursuant to the Soldiers’ and Sailors Civil Relief Act, for
24 approximately eighteen months. See 50 U.S.C. §§ 501, et seq. The court has considered the parties’
25 arguments fully, and for the reasons set forth below, the court rules as follows.

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28 **BACKGROUND**¹

1 I. The Predicate Arrest and Civil Action

2 On November 20, 2002, Stephanie Atkins phoned the Alameda Police Department (“APD”) to
3 report that her father, plaintiff Steven Atkins, had been drinking heavily and had left home in his car.
4 Speaking with an APD emergency operator, Stephanie described the make and license number of plaintiff’s
5 car, adding that she believed he was planning to purchase more alcohol. APD dispatched Officer Wyeth to
6 respond to Stephanie’s call. Officer Wyeth could not locate plaintiff (or plaintiff’s vehicle) in the areas
7 surrounding plaintiff’s home, but, to verify Stephanie’s report, he drove to the Atkins’ home. Once there,
8 Officer Wyeth spotted a vehicle matching Stephanie’s description in the driveway of plaintiff’s home. The
9 vehicle’s headlights were on; its engine block was warm; and it had been parked such that its bumper
10 pressed against the garage door.

11 Wearing a micro-cassette recorder, Officer Wyeth approached plaintiff’s front door. An extensive
12 exchange involving Officer Wyeth, plaintiff, Stephanie, and plaintiff’s wife, Sheila, followed.² At the end of
13 the exchange, Officer Wyeth arrested plaintiff and transported him to the APD jail, where plaintiff spent
14 approximately four hours in a detoxification cell; at 12:35 a.m., after being cited and after signing a promise
15 to appear, plaintiff was released. Within two weeks, the district attorney of Alameda County filed charges
16 against plaintiff for driving under the influence and refusing to take a chemical test. Deputy District Attorney
17 McAndrew later learned that neither Sheila nor Stephanie wished to proceed with the prosecution, and,
18 citing insufficient evidence, the district attorney dismissed the criminal action on January 27, 2003.
19 Approximately six months later, plaintiff filed a complaint in this court, alleging a myriad of civil rights
20 violations and seeking unspecified amounts of compensatory and punitive damages.

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23 II. Wyeth’s Military Service

24 Officer Wyeth is a Lieutenant Commander in the Active Reserves of the United States Navy.
25 See Wyeth Decl., ¶¶ 1–4. In late 2003, the Navy notified Officer Wyeth that he had been recalled to
26 active duty. According to the terms of his recall, Officer Wyeth’s last day of work with the APD was to be
27 December 23, 2003, and he was to commence active service on January 1, 2004. See Wyeth Decl., ¶¶
28 2–4. His tour is slated to last approximately eighteen months. Id. During his time in active military service,

1 Wyeth will be stationed at a confidential location outside the United States; he will not be able to arrange
2 for a furlough or temporary leave from his service, and he will not be able to participate in any litigation-
3 related activities from afar. Id. at ¶¶ 5–6.

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6 DISCUSSION

7 In 1940, Congress passed the Soldiers’ and Sailors’ Civil Relief Act (“the Act”). See 50 U.S.C.
8 Appx. §§ 501, et seq. The express purpose of the Act is “to provide for, strengthen, and expedite the
9 national defense,” see id. at § 510, and the Act makes explicit “provision . . . [for the] suspen[sion of]
10 enforcement of civil liabilities, in certain cases, of persons in the military service of the United States.” Id.
11 (adding that such suspension will “enable such persons to devote their entire energy to the defense needs of
12 the Nation”). To that end, section 510 of the Act permits “temporary suspension of legal proceedings and
13 transactions which may prejudice the civil rights of persons in [military] service.” Id.; see also S. Rep. No.
14 2109, 76th Cong., 3d Sess. 4–6 (1940); 88 Cong. Rec. 5368.³ Section 521 of the Act explains:

15 At any stage thereof any action or proceeding in any court in which a person in military
16 service is involved, either as plaintiff or defendant during the period of such service or within
17 sixty days thereafter may, in the discretion of the court in which it is pending, on its own
18 motion, and shall, on application to it by such person or some person on his behalf, be
19 stayed as provided in this Act, unless, in the opinion of the court, the ability of plaintiff to
prosecute the action or the defendant to conduct his defense is not materially affected by
reason of his military service.

20 Id. at § 521; see also Boone v. Lightner, 319 U.S. 561, 564–65 (1943) (noting that the Act’s use of the
21 mandatory verb “shall” does not eliminate a court’s discretion because of the subsequent “unless” phrase).

22 On December 19, 2003, Congress slightly revised the Act, confirming the ongoing vitality of the Act and
23 reaffirming the Act’s core mission, viz., to provide for the temporary suspension of particular judicial
24 proceedings. See H.R. 100, Pub. L. No. 108-189, 117 Stat. 2835.

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26 Courts have long construed the “stay” provision of the Act liberally, retaining broad discretion to
27 consider any and all stay-related factors. See, e.g., Boone, 319 U.S. at 571 (leaving the issue to trial
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1 courts' "sound sense" and adding that there is no predetermined burden of proof on stay-related questions
2 under the Act); see also Miller v. United States, 29 Fed. Cl. 107, 120 (Fed. Cl. 1993) (citing S. Rep. No.
3 2109, 76th Cong., 3d Sess. 4 (1940)); Page v. Villa-Real, 1987 WL 10873, *2 (D.D.C. 1987). Still,
4 when assessing motions to stay under the Act, courts typically pay primary attention to two questions: one,
5 whether the serviceperson is stationed overseas, and, two, whether the serviceperson can easily alleviate
6 the need for a stay through, e.g., a furlough or temporary leave from service. See The Antioch Co. v.
7 Scrapbook Borders, Inc., 210 F.R.D. 645, 648 (D. Minn. 2002); Rogers v. Tangipahoa Parish Sheriff's
8 Office, 1997 WL 466922, *1 (E.D. La. 1997); Fleet Mortgage Corp. v. Hansen, 1991 WL 134183, * 1
9 (N.D. Ill. 1991); Page, 1987 WL 10873, *2; Keefe v. Spangenberg, 533 F. Supp. 49 (D. Okla. 1981);
10 Palo v. Palo, 299 N.W.2d 577 (N.D. 1980).
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13 For most of plaintiff's claims, these considerations favor issuance of a temporary stay. Officer
14 Wyeth has been stationed abroad, sent by the Navy to fulfill his military service in an overseas—if
15 otherwise confidential—locale. Cf. Palo, 299 N.W. 2d at 579 (noting that the Act requires more than a
16 "mere showing" that the defendant is in the military service); see also Hackman v. Postel, 675 F. Supp.
17 1132, 1133 (N.D. Ill. 1988). Officer Wyeth has also been unable to obtain temporary leave or furlough
18 from his military service, preventing him from participating in this litigation for at least the foreseeable future.
19 See Wyeth Decl., ¶ 6; see, e.g., Page, 1987 WL 10873, at *2 ("[R]ecent decisions under the Act have
20 denied stays where . . . the party is in the military *if not overseas*, and *can easily arrange for a furlough*
21 *or leave in order to participate in the case.*") (emphasis added; citations omitted); Keefe, 533 F. Supp.
22 at 49.⁴ This absence is, for most of plaintiff's claims, no trifling inconvenience. Since Officer Wyeth was
23 the only law enforcement officer to participate in (and to witness) plaintiff's arrest, he is the sole defendant
24 accused of the predicate constitutional violations.⁵ And since Officer Wyeth executed the contested arrest,
25 he is also the key defendant regarding plaintiff's claims against the city, all of which depend on a kind of
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1 derivative liability. See, e.g., Quantanilla v. City of Downey, 84 F.3d 353, 356 (9th Cir. 1996) (“The
2 Supreme Court [has] held that a public entity is not liable for § 1983 damages under a policy that can cause
3 constitutional deprivations, when the factfinder concludes that an individual officer, acting pursuant to the
4 [relevant] policy, inflicted no constitutional harm to the plaintiff.”); Scott v. Henrich, 39 F.3d 912, 916 (9th
5 Cir. 1992), cert. denied, 515 U.S. 1159 (1995).⁶ Without Officer Wyeth’s participation in the litigation of
6 these claims, defendants will be prejudiced immeasurably, and the court’s management and consideration of
7 this action will be substantially hindered. Cf. Fleet Mortgage, 1991 WL 134183, at *1.⁷ For these claims,
8 then, a stay under the Act is appropriate. See 50 U.S.C. Appx. § 510; id. at § 521.
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11 Consistent with the terms of the Act, however, one issue can move forward at this juncture. On
12 February 2, 2004, defendants Eileen McAndrew and the County of Alameda requested leave of this court
13 to file a motion for summary judgment, arguing that absolute immunity shields them from precisely this type
14 of suit. See Statement of Non-Opp., at 2–3. Officer Wyeth’s conduct is not central to the question of the
15 County’s and McAndrew’s absolute immunity, and this immunity question can be resolved as a matter of
16 law on the basis of available (and stipulated) facts. As a result, the court grants the request for leave,
17 though it does so only to the extent the defendants’ promised motion concerns the question of absolute
18 immunity. The court will not consider any other issues until Officer Wyeth returns.
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20 21 CONCLUSION

22 For the foregoing reasons, defendants’ motion to stay this action is GRANTED. With the
23 exception of McAndrew’s and the County’s absolute immunity claim, which will proceed according to the
24 briefing schedule set during the hearing on defendants’ motion to stay, the stay shall cover ALL defendants
25 and ALL of plaintiff’s claims. The stay will last for 180 days, after which time the court will conduct a
26 status conference to discuss Officer Wyeth’s status and to determine whether the stay should be extended.
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IT IS SO ORDERED.

Date: March 8, 2004

_____/s/_____
MARILYN HALL PATEL
Chief Judge
United States District Court
Northern District of California

ENDNOTES

1. Unless otherwise noted, all facts in this section have been culled from the parties' moving papers.
2. The details of this exchange are undeniably central to the viability of plaintiff's many causes of action. But as important as it will eventually be to explore these facts in some detail, it is not necessary to do so here. Defendants' motion to stay is entirely unrelated to the merits of plaintiff's constitutional and common law claims, and the court will not comment upon the validity of those claims here.
3. There is no question that Officer Wyeth qualifies as a "person in the military service" for the purposes of the Act. See especially 50 U.S.C. Appx. § 511 (defining the term "person in the military service" to include, *inter alia*, naval servicepersons "on active duty").
4. In his opposition to defendants' motion to stay, plaintiff seems to protest that Officer Wyeth has not made a good faith attempt to participate in the instant proceedings. Plaintiff offers nothing to substantiate this claim, and Officer Wyeth's declaration is entirely uncontradicted; the court is thus unwilling to discount it here.
5. Ignoring the bounds of his complaint and the limits of his powers as a plaintiff in federal court, plaintiff claims that Officer Wyeth's conduct was both civilly and *criminally* unlawful, citing a number of penal code provisions in support. No criminal charges have been brought against Officer Wyeth, and it is not within plaintiff's authority to bring them in this—or any other—civil action. The court will not consider plaintiff's vituperative claims of criminal misconduct here.
6. The revised version of the Act itself permits the granting of stays in the context of secondary-type liability. Though that portion of the Act likely focused on liability in tort or contract claims, the logic is no less apposite where, as here, a second defendants cannot be liable unless the predicate defendant is.
7. In his opposition to defendants' motion, plaintiff claims that "modern communications have in fact made parts of [the Act] outdated." This rings of a thoroughgoing (if entirely undeveloped) challenge to the operation of the Act as a whole, and it is patently incorrect. The Act has not, despite plaintiff's claims, grown into obsolescence. However convenient email may be, such "modern communications" do not *ipso facto* make servicepersons stationed overseas more available to access, to read, or to respond to court-related documents.